IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1258 OF 1991

Ravindra B. Karnad and Ors. .. Petitioners

Versus

State of Maharashtra .. Respondents

Ms.V.R.Raje l/f. Mr.S.R.Chitnis for petitioners

Ms.S.D.Shinde, A.P.P. for State.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 29th November 2005.

P.C.

. Heard Ms.Raje for petitioner and Ms.Shinde, A.P.P. for State.

2. It appears from the record that pursuant to findings of enquiry commission constituted by the State Government under Commission of Enquiries Act and presided over by the then Sitting Judge of this Court (Lentin, J), the State lodged complaints at various police stations and alleged offences against manufacturers and suppliers of drugs punishable under the Indian Penal Code as well as Drugs and Cosmetics Act. Principle allegation being that the drugs were supplied to public at Government hospitals and the same being of sub-standard quality and specifications. Consequently, while administering them, serious complications arose leading to death of some of the patients admitted in the hospitals.

3. Such prosecution in the present case is subject matter of Criminal case No.35/P of 1989 and Criminal Case No.144/S of 1988 on the file of 6th Metropolitan Magistrate, Mazgaon.

4. Petition is filed to challenge an order passed on 12th June 1991 by the Metropolitan Magistrate, 6th Court, Mazgaon amalgamating above criminal cases. Second prayer in the petition is that charge sheet in Criminal case 35/P/89 on the file of Metropolitan Magistrate be quashed as being without any authority and wholly illegal. It is prayed that only upon quashing of this complaint that the other complaint should be proceeded with.

5. It is pertinent to note that the application on which the order impugned in the petition is passed is presented by the State. State prayed that proceedeings be stayed. Proceedings were stayed in case No.144/S/88. That was on the ground that the other complaint (35/P/89) should be the one which ought to be proceeded with. The reasons for the same are that the said proceedings be stayed because of a

fresh case being registered against the accused. Other reason is that the accused was charged for offences under Drugs and Cosmetics Act together with offences punishable under I.P.C. in one matter whereas in case 35/P/89 they are charge sheeted for offences punishable only under Drugs and Cosmetics Act and later on offences punishable under Cr.P.C. are added.

6. Learned Judge has rejected the application for stay. Learned Judge has in the concluding part of the order held that since private case under Drugs and Cosmetics Act and under section 34 and 109 of I.P.C. is pending before the 6th Court Metropolitan Magistrate and that court is trying both cases, it is desirable that the cases be tried together. That was according to section 210(2) of Cr.P.C.

7. State has not filed any petition to challenge the said order of the learned Judge.

8. The trial court has, therefore, amalgamated/ clubbed the two complaints.

9. In the present petition an affidavit is filed and in para 7 of the same, Senior P.I. Vigilence, Crime Branch, Mumbai has stated that two criminal cases which are clubbed together arise out of manufacturing of injection Manitol. He has pointed out that the factory was situated in Tarapur. Further, the deaths occured at J.J.Hospital and that is how the case came to be filed in the Court at Mazgaon. The trial judge has not specifically referred to the provisions in the code which empower him to club the cases but in the ultimate order/ operative part, he has referred to section 210 which sets out the procedure which is to be followed when there is a complaint and police investigation in respect of the same offence. Section 210 (2) specifically empowers trying of such cases together. In these

circumstances, it cannot be said that the direction to amalgamate/ club these cases is in any way vitiated by any errors apparent on the face of record or perverse, soas to call for interference in the limited jurisdiction conferred upon this Court, more so, when the application for stay which was filed by the prosecution has been rejected.

10. Petition is, therefore, dismissed. However, disposal of this petition shall not in any manner be construed as expression of opinion on the merits of the matter. All contentions raised in this petition sofar as merits of the case are concerned, are kept open for being urged before the trial Court at an appropriate stage.

(S.C.DHARMADHIKARI, J)